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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-206218

DATE: July 12, 1982

MATTER OF: American Indian Health Systems, Inc.

DIGEST:

1. Where agency informs offeror of technical unacceptability of proposal and provides reasonably specific list of deficiencies found in proposal, offeror cannot wait for debriefing before protesting and objecting to any of the evaluation findings. Protest filed which is only general in nature and which does not disagree with any evaluation finding provides no basis for GAO to sustain protest.
2. Where no proposal is found to be technically acceptable and violations of Government-wide and agency procurement regulations have occurred, agency has reasonable basis for canceling solicitation.

American Indian Health Systems, Inc. (Health Systems) protests the evaluation of proposals under and the subsequent cancellation of request for proposals (RFP) No. 235-82-R-0001 issued by the Indian Health Service, Department of Health & Human Services. We deny the protest.

Health Systems' first concern is with proposal evaluation. Health Systems' proposal was rejected as technically unacceptable. Health Systems questions that determination, even though the agency provided a list of several deficiencies associated with the proposal, and has been seeking a debriefing.

Although the debriefing has not taken place, the list of deficiencies provided to Health Systems is fairly specific. For example, the proposal was found to lack 1) alternative plans or provisions for financially catastrophic

events; 2) position descriptions and resumes; 3) a feasibility study description; and 4) back-up evidence of community support. The protester has not challenged any of these findings. Under the circumstances, since specific deficiencies have been pointed out, we think if Health Systems disagrees with these evaluation findings, it was incumbent upon it to so state rather than wait for a debriefing, since the basic deficiencies perceived by the agency were already known to it. See Informatics, Inc., B-188564, April 18, 1977, 77-1 CPD 272. Consequently, since the protester has not indicated any basis for our objecting to the evaluation, we deny this aspect of the protest.

With respect to the cancellation, the agency reports that no proposal received was technically acceptable and that various errors in the solicitation and evaluation process--some contrary to the Federal Procurement Regulations (FPR) and to Departmental procurement regulations -- had occurred, all of which led it to conclude that cancellation was appropriate.

Contracting agencies have broad discretion in determining when it is appropriate to cancel a solicitation. See Seaward International, Inc., B-199040, January 16, 1981, 81-1 CPD 23. When formal advertising procedures are used and bids have been opened, cancellation could have an adverse effect on the competitive bidding system and for that reason contracting officers, in exercising their discretion, must find a "compelling" reason that warrants cancellation. FPR § 2-404.1(a) (1964 ed.); Engineering Research Inc., 56 Comp. Gen. 364 (1977), 77-1 CPD 106. When negotiation procedures are used, however, the Government need not have a compelling reason to cancel a solicitation after receipt of offers because there has been no public opening and exposure of competitors' price. Rather, the Government need only establish a reasonable basis for the cancellation. Management Services Inc., B-197443, June 6, 1980, 80-1 CPD 394.

In this case, the record clearly establishes that the agency had a reasonable basis to cancel. In the exercise of its judgment, the efficacy of which has not been refuted, no proposal received was technically acceptable; the solicitation contained a late proposal clause which was not authorized for use because the provisions of FPR § 1-3.802-2 had

not been followed; and the evaluation panel violated agency regulations when it considered technical and business proposals concurrently.

The protester does not dispute any of this; instead, it asserts that cancellation nonetheless was improper because 1) it has not yet had a debriefing; 2) the agency is continuing to pay a prior contractor for inadequate services; and 3) the agency canceled some other related contracts.

None of these points, however, has any bearing on the propriety of the cancellation. The failure of an agency to provide a requested debriefing cannot operate to preclude cancellation of an RFP when there is valid basis for the cancellation. While a protester might want to argue that a cancellation based solely on the unacceptability of all offers, including its own, is improper until the protester is given an opportunity to contest the evaluation of its offer, here, as indicated above, we believe this protester has had such an opportunity and has not availed itself of it. Thus, we fail to see how the lack of a debriefing was prejudicial to Health Systems in this respect. Moreover, the agency had other reasons for canceling aside from the results of the evaluation. In addition, the other points raised by the protester involve other contracts and have no relevance to this procurement. Consequently, we find no basis to object to the cancellation.

Health Systems suggests that its complaint about how Health Services are being provided to Indians warrants "a full and complete investigation." However, we have repeatedly held that the burden of proof is on the protester to affirmatively prove its case. We do not conduct investigations pursuant to our bid protest function for the purpose of establishing the validity of a protester's assertions. Tri-State Service Company, B-195642, January 8, 1980. 80-1 CPD 22.

The protest is denied.

for *Shilton J. Fowler*
Comptroller General
of the United States